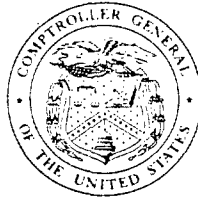


DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

P.L. I
J. Punningham

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FILE: B-192913

DATE: January 30, 1979

MATTER OF: McCrory Construction Company

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[Bid With Named Subcontractor But No Commitment to do Required Work Is Considered Nonresponsive]

DIGEST:

Low bid was nonresponsive to subcontractor listing requirement of solicitation since bid did not expressly reveal commitment of bidder to do required mechanical work either with bidder's own employees or with named subcontractor.

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McCrory Construction Company protests the rejection of its low bid by the General Services Administration (GSA) under invitation for bids (IFB) GS-04B-16998 for construction of a "Vehicle Maintenance Facility and Parking Structure" in the Strom Thurmond Federal Building, Columbia, South Carolina.

GSA found McCrory's low bid to be nonresponsive to the IFB's "subcontractor listing" requirements. McCrory contests this finding. As explained below, we cannot question this finding.

The subcontractor listing requirements in question were described in the "Special Conditions" and the "Supplement to Bid Form List of Subcontractors" provisions of the IFB as follows:

"Section 01100 - Special Conditions"

* * * * *

"16. Listing of Subcontractors"

"16.1 For each category on the List of Subcontractors which is included as part of the bid form, the bidder shall submit the name and address of the individual or firm with whom he proposes a contract for performance of such category, Provided, that the bidder may enter his own name for any category which

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he will perform with personnel carried on his own payroll (other than operators of leased equipment) to indicate that the category will not be performed by subcontract.

* * * * *

"16.5 Except as otherwise provided herein, the successful bidder agrees that he will not have any of the listed categories involved in the performance of this contract performed by any individual or firm other than those named for the performance of such categories.

* * * * *

"16.13 If the bidder fails to comply with the requirements of subparagraphs 16.1, 16.2, or 16.3 * * * the bid will be rejected as nonresponsive to the invitation.

* * * * *

"Supplement to Bid Form - List of Subcontractors.

"Listed below are the names and business addresses as required by the 'Listing of Subcontractors' paragraph of the Special Conditions:

"Category

Section No.	Subcontractor,	Portion of Category
and Title	Names and Business Addresses	(as applicable)

[There followed a list of various work requirements including 'Division 15-Mechanical.']"

On the "Supplement to Bid Form - List of Subcontractors" sheet of its low bid McCrory entered the names of subcontractors for all but "Division 15-Mechanical," which the IFB stated applied to heating, ventilation, air conditioning, plumbing, and fire protection work. For this Division, McCrory inserted the phrase "NONE RECEIVED."

By letter dated the day of bid opening (August 25, 1978), but received after opening, McCrory informed GSA that the company had "inadvertently failed to list our mechanical subcontractor who [would] be the W.B. Guimarin Company." McCrory further said:

"[the failure to list Guimarin was] the result of our failure to realize that the Guimarin plumbing quotation encompassed the heating and air conditioning requirements, and incorrectly considered the Guimarin quotation to be for the plumbing alone which would constitute over 90% of Guimarin's quotation.

"In preparation of our bid, it was our intention--and remains so--to use the Guimarin firm for the work encompassed by their bid. McCrory Construction Company traditionally considers 'mechanical' to include only heating, ventilation and air conditioning, and considers plumbing as a separate trade from 'mechanical.' This is offered in explanation of our thinking which led to our failure to list the W. B. Guimarin Company and led to our insertion of the phrase 'NONE RECEIVED.'"

GSA determined that McCrory's bid was nonresponsive to the subcontractor listing requirements, as follows:

"The solicitation called for entry of the names and addresses of proposed subcontractors or the entry of the bidder's own name to indicate a category or portion of category that would not be subcontracted; to accomplish the intended purpose, the solicitation went on to provide that the successful bidder agreed

not to have the work performed by anyone other than those named. By failing to enter any name for the mechanical work, McCrory made no bid commitment that would be enforceable if it were awarded the contract.

"Entry of 'NONE RECEIVED' is plainly not an equivalent to entering a name. The words convey nothing more than information that McCrory had not 'RECEIVED' anything from subcontractors as of bid opening time. Nothing in the phrase 'NONE RECEIVED' would preclude McCrory from 'RECEIVING' subcontractor quotations after bid opening or from bid shopping in the process.

"Accordingly, McCrory's bid is clearly nonresponsive to the provisions of the invitation and is not eligible for acceptance * * *.

"[Also,] McCrory's [August 25] letter is pertinent to the extent that it confirms the omission, apparent from the face of the bid, of the name of its intended subcontractor."

McCrory's key position is that McCrory's bid did "unambiguously indicat[e] who [would] perform the [Division 15-Mechanical work]" involved in the construction project. The entry of "NONE RECEIVED" for this work category-- "when read in conjunction with [McCrory's] entries for the other five categories on the form (none of which listed McCrory) and the terms of paragraph 16.1 [of the Special Conditions]--clearly and unambiguously indicates that McCrory's mechanical work will not be performed by subcontract." Hence, McCrory's bid was responsive to the subcontractor listing requirements.

It is not clear to us that the phrase "NONE RECEIVED" necessarily represented--as McCrory would apparently urge us to conclude--that McCrory had absolutely no contacts with proposed subcontractors about possible prices for subcontracting the "Division 15-Mechanical" work prior to bid opening.

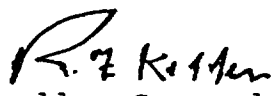
The phrase may be reasonably read as meaning only that McCrory had not received any formal subcontractor quotations--the acceptance of which would have consummated a binding subcontract on the award of the prime contract--but that the computed price for the work was based on an informal discussion of the work with potential subcontractors. Under this reading McCrory's representation meant that it had not yet entered into a binding subcontractual agreement (contingent only on award of the prime contract), but would do so after bid opening based on the informal prebid discussions.

Assuming, without deciding, that the representation was intended to convey the complete absence of contacts with potential subcontractors for Division 15 work and, further, that McCrory intended to convey its decision to do the work only with its own employees involving only McCrory employee costs, the actual representation did not evidence the supposed intent. This supposed intent is obviously contradicted by the August 25 letter which McCrory submitted after bid opening. Although the letter has no bearing on the responsiveness of McCrory's bid, it does highlight the patent ambiguity of the phrase "NONE RECEIVED," notwithstanding our above assumptions regarding McCrory's intent. The mere fact that McCrory may have calculated the cost for the work solely within its own company limits does not in any way mean that it was committing itself upon award to doing the work only with its own employees absent something more in the bid to concretely evidence this intent.

The mere listing of subcontractors for other categories of work in McCrory's bid does not constitute the further commitment required for Division 15 work, especially in view of the express mandate of paragraph 16.1 of the Special Conditions that bidders were to enter their own names for categories of work not to be performed by subcontract. Thus, to the extent that McCrory intended to perform Division 15 work with its own forces rather than subcontractors, it failed to convey that intent in a form resulting in the express commitment required by paragraph 16.1.

Because of this failure, we conclude that the bid was nonresponsive to paragraph 16.1 of the Special Provisions and that McCrory's bid was, therefore, properly rejected under paragraph 16.13 of the Special Provisions. See John Grace & Co., Inc., B-190439, February 15, 1978, 78-1 CPD 131; 43 Comp. Gen. 206 (1963).

Protest denied.


Deputy Comptroller General
of the United States